MF 02-1
Tax Type: Motor Fuel Use Tax
Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE	**)**	
OF THE STATE OF ILLINOIS	**)**	
	)	**Docket No. 01-ST-0000**
v.	**)**	**Acct # 00-00000**
	)	**NTL # 00-000000 0**
JOHN DOE	**)**	
ABC, LLC	**)**	
Taxpayer	**)**	

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Edward D. McNamara, Jr. of McNamara & Evans for John Doe, ABC, LLC.

Synopsis:

On April 20, 2001, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe and ABC, LLC ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying required decals pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The NTL assessed a penalty of $1,000. The taxpayer timely protested the NTL, and a hearing was held during which the taxpayer argued that the penalty provision does not apply if the taxpayer had a valid motor fuel use tax license but

simply failed to display the decals. After reviewing the record, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On March 2, 2001, the taxpayer was operating a commercial motor vehicle in Illinois and was issued a citation for failing to have a valid motor fuel use tax license and failing to display motor fuel tax decals. (Dept. Ex. #1).

2. The taxpayer had a valid Illinois Interstate Motor Fuel Use Tax License that was effective from January 26, 2001 to December 31, 2001. (Taxpayer Ex. #1)

3. The taxpayer had motor fuel use tax decals for the vehicle in question. The taxpayer did not present evidence that it was displaying the decals on the vehicle on March 2, 2001. (Taxpayer Ex. #2)

4. On April 20, 2001, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of $1000 for failure to have a valid license and failure to display the decals while operating the vehicle on March 2, 2001. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

The provision of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*) that concerns penalties relating to motor fuel use tax licenses and decals provides in part as follows:

> "(a) If a commercial motor vehicle is found operating in Illinois (i) without displaying decals required by Section 13a.4 of this Act, or in lieu thereof only for the period specified on the temporary permit, a valid 30-day International Fuel Tax Agreement temporary permit, (ii) without carrying a motor fuel use tax license as required by Section 13a.4 of this Act, (iii) without carrying a single trip permit, when applicable, as provided in Section 13a.5 of this Act, or (iv) with a revoked motor fuel use tax license, the operator is guilty of a petty offense and must pay a minimum of $75. For each subsequent occurrence, the operator must pay a minimum of $150. * * *

> "(b) If a commercial motor vehicle is found to be operating in Illinois without a valid motor fuel use tax license and without properly displaying decals required by Section 13a.4 * * * the person required to obtain a license or permit under Section 13a.4 or 13a.5 of this Law must pay a minimum of $1,000 as a penalty." (35 ILCS 505/13a.6)

The taxpayer does not dispute the fact that at the time that the taxpayer's driver was stopped, he did not have a motor fuel use tax license or decals in the vehicle. The officer had the opportunity to issue a ticket for the petty offenses of failure to carry a motor fuel use tax license and failure to display the decals, but gave the driver a warning instead. (Tr. p. 19)

The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature. Board of Trustees of Southern Illinois University v. Department of Human Rights, 159 Ill.2d 206, 211 (1994). In order to determine the legislature's intent, the first step is to consider the plain and ordinary meaning of the language of the statute. Thomas v. Greer, 143 Ill.2d 271, 278 (1991). In addition, taxing statutes are to be strictly construed, and in cases of doubt, they are construed most strongly in favor of the taxpayer. Van's Material Co. v. Department of Revenue, 131 Ill.2d 196, 202 (1989).

Subsection (b) of section 13a.6 states that a $1,000 penalty must be imposed if the vehicle is found to be operating without a valid license **and** without properly displaying the decals. Because the legislature used the word "and," both the failure to have a valid license and the failure to display the decals are required before the penalty can be imposed. This interpretation is consistent with the plain and ordinary meaning of the language of the statute. It is also a logical conclusion because a taxpayer cannot have the decals without also having a valid license, and therefore if a taxpayer does not have a valid license, it cannot possibly display the proper decals. At the hearing, the taxpayer produced a motor fuel use tax license and decals that were in effect at the time the vehicle was stopped. Because the taxpayer produced evidence that it had a valid license and decals, the penalty should be abated.

It is therefore recommended that the Notice of Tax Liability be dismissed.

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Linda Olivero
Administrative Law Judge

Enter: January 8, 2002